

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Wheeling & Lake Erie Railway Co.,

Plaintiff,

v.

Village of Hopedale, Ohio, et al.,

Defendants.

Case No. 2:17-cv-491

Judge Graham

TEMPORARY RESTRAINING ORDER

This matter is before the Court on the emergency motion of Plaintiff Wheeling & Lake Erie Railway Company (“the Wheeling”) for a temporary restraining order. Pursuant to S.D. Ohio Local Civil Rule 65.1, the Court conducted a preliminary conference on June 9, 2017 with counsel for all parties present.

The Court finds the motion to be well-taken and hereby GRANTS the temporary restraining order. Pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, the Court specifically finds: (1) a substantial likelihood that the Wheeling will prevail on the merits of its declaratory judgment claims in that the Interstate Commerce Commission Termination Act, 49 U.S.C. 10101, et seq., the Supremacy Clause of the Constitution of the United States, and the Commerce Clause of the Constitution of the United States, specifically prohibit the Defendants from the conduct set forth in the Wheeling’s verified complaint; (2) the Wheeling will suffer irreparable harm in the absence of this order; (3) no substantial harm justifies denial of the Wheeling’s motion; and (4) the public interest is served by the imposition of this order.

The Court therefore orders that Defendants Village of Hopedale, Michael Pelegreen, Sr., Ronald Hawkins, and their employees or agents immediately cease and desist from any interference, including by prohibition, prosecution, threat of prosecution, or other action, with the Wheeling’s

efforts to perform necessary emergency repairs to a collapsed drainage culvert beneath West Main Street in the Village of Hopedale, Ohio.

The Court further orders that the Wheeling allow representatives for the Village access to the site(s) of the repair and not interfere with the Village's ability to observe and document the repair work being done.

Pursuant to S.D. Ohio Local Civil Rule 67.1, the Wheeling shall post bond in the amount of Five-Thousand dollars (\$5000).

The Court hereby sets this matter for an evidentiary hearing on the Wheeling's request for injunctive relief on June 19, 2017 at 10:00 a.m.

s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: June 9, 2017